

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

ENID MCCORMACK,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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No. 4:10-CV-1068 CAS

**ORDER**


This matter is before the Court on plaintiff's motion to read Dr. Walentynowicz's deposition at trial because of his unavailability as a witness to testify live. Defendant has consented to the motion.

In her motion, plaintiff states that Dr. Walentynowicz was her treating physician for the hip fracture she suffered when she fell at the United States post office in Creve Coeur, Missouri. The parties took the deposition of Dr. Walentynowicz on January 7, 2011. At deposition, Dr. Walentynowicz testified that it would be "a great hardship to [him] to have to testify at court" because he is a practicing surgeon. Plaintiff states that Dr. Walentynowicz's live testimony is not necessary because his opinions and factual testimony are all included in the deposition transcript. In the interest of justice, plaintiff seeks permission to read the deposition transcript at trial.

Pursuant to Federal Rule of Evidence 32(a)(4)(E), the Court finds that because the live testimony of Dr. Walentynowicz would cause him great hardship, exceptional circumstances exist to permit the deposition to be read at trial. For this reason, plaintiff's motion will be granted.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion to read Dr. Walentynowicz's deposition at trial because of his unavailability as a witness to testify live is **GRANTED**. [Doc. 20]

  
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**CHARLES A. SHAW**  
**UNITED STATES DISTRICT JUDGE**

Dated this 12th day of July, 2011.